



U.S. Department of Justice

Civil Rights Division

*Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

June 17, 2005

John C. Thatcher
Knox County Prosecuting Attorney
117 East High street, Suite 234
Mount Vernon, Ohio 43050

Dear Mr. Thatcher:

The Voting Section of the Civil Rights Division recently conducted an investigation into the conduct of the November 2, 2004 general election in Knox County with a particular focus on the events occurring at the Gambier/Kenyon College precinct ("Gambier/Kenyon"). As you may be aware, there were long delays in voting at the Gambier/Kenyon site, where the majority of the registered voters are college students. Some voters chose to wait until approximately 4:00 a.m. to cast their ballots on Knox county voting machines instead of using available paper ballots. As set forth below, however, our investigation has revealed no evidence that either the delays in voting at this site or the problems with the number of voting machines were the result of any intentionally discriminatory conduct on the part of County election officials. In short, there was no violation of the Voting Rights Act and we are thus closing our file.

Our inquiry was prompted by the Civil Rights Division's responsibility to enforce 42 U.S.C. §1973bb, which protects the rights of 18-21 year-old voters under the 26th Amendment to the United States Constitution. From the outset, county officials have been fully cooperative with our investigation, and we are grateful to all of them. We also are most appreciative of your personal assistance.

The information you provided established that Knox County had an insufficient number of voting machines to serve the unusually large number of voters who came to the polls to vote on November 2. However, our investigation showed that the same number of voting machines used during the November 2004 election had been adequate to serve voters in all previous elections from 1996 through the 2004 primary, both in Gambier/Kenyon and Knox County generally. The real problem in 2004 was that the national focus on Ohio by the political parties, candidates, and other third party organizations led to sharp increases in voter turnout (not to mention voter registration) throughout Ohio, including Knox County, compared to those prior elections. And Knox County was simply not equipped to handle the increase.

Certain systemic deficiencies also contributed to the delays in voting on election day. While there is some disagreement as to minor details, key facts are not in dispute. As an initial matter, the practice in Knox County, and in other Ohio counties, has been to allocate the number of voting machines well in advance of the actual election date based on expected registration and turnout, taking into account turnout in prior elections. This allows allocation, identification, appointment and training of the necessary complement of poll workers for each polling site. The County also follows Ohio election practice of placing a minimum of two voting machines in each polling place, regardless of size, so that voting at the site can continue if one machine breaks down. For the November 2004 election, the County allocated its entire inventory of usable voting machines (except for one) to its polling sites, with the result that every polling place, including the Gambier/Kenyon polling place, was equipped with two voting machines. These decisions were made by a board that includes equal representation from the two political parties, and the decisions appear to have been made jointly and cooperatively.

Furthermore, circumstances focused unprecedented pressure on the Gambier/Kenyon precinct. As late as the March 2004 primary election, the Gambier/Kenyon precinct had only 761 registered voters, of whom only 239 (31%) voted in the primary election. For the 2000 general election, Gambier/Kenyon had a larger number of registered voters, 1,081 (of whom 41% cast general election ballots), so that some increase in registration was predictable for the November 2004 election. But registration grew dramatically by November 2004 to 1,607. As a result, a majority of all Gambier/Kenyon registrations were new (*i.e.*, 2004)

registrations, and the vast majority of those registrations appear to have been received near the close of registration in the Fall of 2004, after the opening of classes at the college and after the board had made its voting machine allocations.

It is clear that the Knox County elections office was overwhelmed during this period. In addition to the large increase in voter registration, the County handled 4,733 changes in addresses for registrants, and researched numerous signatures on petitions for a statewide voter initiative and a would-be candidate for President. Consider that while the 2000 Presidential election generated 217.5 overtime or comp time hours for elections staff, the 2004 election generated 574.75 comp time hours for regular staff and 330.5 hours for special part-time staff hired to help with these additional issues. Changes in election practices and procedures by the state government, and uncertainty caused by litigation over statewide election procedures just prior to the election, added to the burden on Knox County election officials. Under these circumstances, it was very difficult for County officials to focus on rapidly changing requirements for its precincts, and the window of opportunity to resolve complex challenges was extremely limited. Even with the benefit of hindsight, the County had very limited options and, in any event, lacked the resources to resolve many of the issues.

It also is apparent that as the November 2004 election day progressed, long lines quickly developed at the Gambier/Kenyon polling place because of the substantial increase in the number of registered voters assigned to this site just prior to the election, the large number of first-time voters, and the remarkable 76 percent voter turnout at the site, a rate nearly double the 2000 turnout. In all, nearly three times as many voters cast ballots at the Gambier/Kenyon polls than in 2000, which, we add parenthetically, is a point to be recognized and applauded. Yet the County's options for addressing the resulting lines were severely constrained by the fact that it had no more voting machines available, the last machine held in reserve having been sent to replace a failed machine at another site. And the nature of the voting machines prevented their transfer between precincts once they had been programmed, thereby rendering re-allocations virtually impossible.

The County did make paper ballots available at the Gambier/Kenyon polls after the close of polls pursuant to the order of the federal court in *Ohio Democratic Party v. Blackwell*,

No. C2 04-1055 (S.D. Ohio November 2, 2004). In fact, the chairpersons of the Democratic and Republican Parties of Knox County personally appeared together at the Gambier/Kenyon poll by 9:00 p.m. and jointly announced to waiting voters that paper ballots were available to all of the voters, and jointly assured all voters that such ballots would in fact be counted. If these ballots had been used by the voters, there would have been no further extraordinary delays. Numerous voters availed themselves of this opportunity and were able to exercise their vote without much delay.

Unfortunately, most of the evening voters made an affirmative decision not to cast paper ballots, but opted instead to wait in line and vote on the machines. Many voters apparently predicated their decision on erroneous advice from some private individuals that the paper ballots were invalid and thus would not be counted. This advice seems to have been imparted primarily by members of the Gambier/Kenyon community who were sincere in their wish that all ballots be counted, but unintentionally precipitated extraordinarily long delays in voting.

The advice to vote only on the machines was clearly in error, was not provided by election officials, and was completely contrary to the information that was being provided to the voters waiting in line by election officials representing the two major parties. There is no indication that the erroneous advice was issued maliciously; rather, it appears to have been the product of unfounded suspicion and distrust that was generated outside of Knox County. Nevertheless, it affected and impeded County residents.

These delays are obviously regrettable. We are pleased that Knox County has agreed with the Department of Justice to take steps to assure that such delays do not recur, barring another unexpected surge in turnout in a future election. The County has plans to increase its stock of voting machines from 112 to 160, and has agreed that a sufficient number of machines shall be held in reserve to accommodate increases in voter turnout as occurred among the Kenyon students, and that predictably may occur elsewhere in the County in the future.

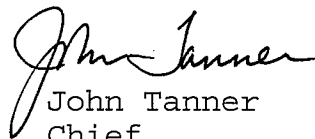
The County has also agreed to take affirmative steps to head off misunderstanding and suspicion associated with the election process. Again, we acknowledge that such suspicion arose from activities outside Knox County, and stands in sharp contrast to

the joint efforts of the County and the Democratic and Republican leadership in the County to reassure voters and to run the election in a non-partisan manner. Such steps will include outreach to Kenyon and other area colleges to explore ways in which the campuses and election office can share information on the voter registration and election process.

We close with a note on the Kenyon community. As the hours wore on, it appears that few if any students left without voting. They waited their turn, or allowed elderly or other voters to go ahead of them. They supported and encouraged each other and maintained good spirits throughout the process, working on school assignments and even ordering pizzas to be delivered while they waited in line. The students' determination, good humor, and commitment deserve every commendation as an example to their fellow citizens.

We appreciate the full cooperation you showed the Civil Rights Division in its investigation throughout this matter, and we appreciate your determination and assurance that you will take steps to meet these voters' needs in all future elections.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Tanner".

John Tanner
Chief
Voting Section

cc: Gregory Spaid
Provost, Kenyon College